

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 439 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-  
and  
Hon'ble MR.JUSTICE D.P.BUCH sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KOLI SANJAY

Versus

STATE OF GUJ  
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Appearance:

1. Criminal Appeal No. 439 of 1993  
MR BS SUPEHIA for Petitioner No. 1  
MR MA BUKHARI, A.P.P. for Respondent No. 1
- 

CORAM : MR.JUSTICE B.J.SHETHNA  
and  
MR.JUSTICE D.P.BUCH

Date of decision: 21/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The Appellant - accused has challenged in this Appeal the Judgment and order of conviction and sentence dated 4.1.1993 passed by the learned Additional Sessions Judge, Surendranagar, in Sessions Case No.29 of 1992, convicting the appellant - accused for the offence u/s. 302 I.P.Code for committing double murder of deceased Manjibhai Motibhai as well as Chaturbhai Mohanbhai on 23.12.1991 and sentenced him to suffer Life Imprisonment.

2. This Appeal is preferred through Jail by the appellant - accused which was ably argued by the appointed learned Counsel Shri Supehia.

3. Considering the evidence on record learned Counsel Shri Supehia straightway conceded that he can not argue that the appellant - accused had not committed murders of deceased Manjibhai Motibhai and deceased Chaturbhai Mohanbhai on 23.12.1991, but his only argument was that considering the F.I.R. lodged by the accused himself regarding the incident and other evidence on record it cannot be said to be a case of murder u/s.302 I.P.Code. According to him it would be a maximum case under Section 304, Part-I, I.P.Code, because at the time of incident the accused, under the grave and sudden provocation, committed murders of aforesaid 2 persons. He, therefore, submitted that the order of conviction passed by the learned trial Judge convicting the appellant - accused for the offence u/s.302 I.P.Code be altered and the appellant - accused be convicted for the offence u/s.304, Part-I I.P.Code and the sentence has already undergone be passed because for nearly 10 years the appellant - accused has remained in Jail.

4. Before appreciating the aforesaid contention of shri Supehia we would like to reproduce some material facts in the case, which is as under :

The Appellant - accused is a resident of village Chhatraliya of Chuda Taluka, District Surendranagar. He was always trying to molest Bhavnaven, young daughter of Dilipbhai and grand daughter of deceased Manjibhai Motibhai. He used to go after Bhavnaven wherever she was going and harassing her. Because of this behaviour of the appellant - accused Dilipbhai Manjibhai, father of Bhavna, rebuked the accused.

On 23.12.1991 when Dilipbhai was coming out from his Wadi on his motor cycle at that time the accused stood in the middle of the road and took a cudgel with Dilipbhai. Because of that incident deceased Manjibhai,

father of Dilipbhai and grand father of Bhavna rebuked the appellant - accused. The accused was annoyed because of this incident and he was keeping watch over Manjibhai. When he came to know that the deceased Manjibhai had gone to Chuda, therefore, on 24.12.1991 he was waiting for the return of Manjibhai on the Ota of temple of Motabha. Firstly he offered coconut in the temple and waited there with knife. At about 12.00 noon Manjibhai was coming with Chaturbhai on his motor cycle from Chuda to Chhatraliya the appellant chased them and by giving successive knife blows first killed deceased Manjibhai Mohanbhai and when Chaturbhai tried to intervene he was also killed by giving successive knife blows by the appellant - accused. Both the deceased succumbed to their injuries on the spot. Thereafter the accused ran away from the place of incident. Along with the weapon i.e. knife he went to the Police Station and produced knife and reported about the incident which was reduced in writing at Ex.32. However, the learned Judge has rightly exhibited the same regarding the signature of the accused only below his statement at Ex.32. However, his information about the incident was reduced in writing at the police station by Head Constable Babulal Pujari, at about 4.00 p.m. on the day of incident i.e. 24.12.1991. The accused was arrested immediately and after completing the investigation the police filed charge-sheet against him before the learned Magistrate, who committed the same to the Court of Sessions.

5. To prove its case against the accused the prosecution has examined in all 16 witnesses. There is one eye witness i.e. Dilipbhai Jivabhai, P.W. 15, Ex.44. He has completed supported the prosecution case. Surprisingly he is also examined as Defence Witness by the appellant - accused himself at Ex.46.

6. From his evidence it is clearly that the appellant - accused was not at all entitled for any benefit. There was no question of grave and sudden provocation on his part at the time of incident. The appellant - accused was in habit of molesting and teasing Bhavna, grand daughter of deceased Manjibhai, for which he was earlier warned by Dilipbhai, father of Bhavna. When he had quarrel with Dilip about the incident he was rebuked by deceased Manjibhai, grand father of Bhavna and father of Dilip just a day before the incident. He was determined to take revenge for the same. Therefore, on the day of incident he was waiting at the temple with knife. First he offered Coconut at the temple and when he saw deceased Manji coming from opposite direction along with deceased Chatur he assaulted deceased Manji

with knife. When deceased Chaturbhai tried to intervene and save deceased Manju he had not even spared Chaturbhai and gave successive blows with knife on his vital part. Because of that both the deceased died on the spot. This incident was witnessed by eye witness Dilipbhai Jivabhai. Therefore, it appears that he noticed that he had no way to save himself from this double murder and on conviction he might be awarded maximum sentence of death penalty, therefore, he went to the Police Station and informed about the incident and also produced the weapon i.e. knife which was used by him for committing 2 murders. It is done only with a view to get protection in the name of grave and sudden provocation for which he is not entitled.

7. Learned trial Judge has considered the evidence of not only eye witness Dilipbhai, but all other witnesses and considering the medical evidence and the injuries received by both the deceased he has rightly come to the conclusion that there was no question of grave and sudden provocation to the accused and he should be convicted for the maximum offence u/s. 302 I.P.Code and accordingly he was convicted.

8. In our considered opinion the learned trial Judge has rightly convicted him for the offence u/s. 302 I.P.Code and there cannot be lesser sentence than the sentence of Life Imprisonment which is imposed by the learned trial Judge.

9. In view of the above discussion the Judgment and order passed by the learned trial Judge is hereby confirmed. And, this Appeal is dismissed.

sd/-

(B.J.Shethna, J.)

Date : December 21, 2001 sd/-

( D. P. Buch, J.)

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